

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

PHILLIP C. GARBER,

Plaintiff-Petitioner,

vs.

UNITED STATES OF AMERICA,

Defendant-Respondent.

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Case No. 3:04cv316

(Related Criminal Case 3:01cr26)

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #59) IN THEIR  
ENTIRETY; PETITIONER'S OBJECTIONS (DOC. #60) TO SAID JUDICIAL  
FILING OVERRULED; FURTHER OBSERVATIONS OF THE COURT SET  
FORTH; JUDGMENT TO ENTER IN FAVOR OF DEFENDANT-RESPONDENT  
AND AGAINST PLAINTIFF-PETITIONER, DISMISSING PLAINTIFF-  
PETITIONER'S PETITION UNDER 28 U.S.C. § 2255; TERMINATION ENTRY

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Based upon the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Report and Recommendations filed September 28, 2004 (Doc. #59), the Answer of the United States to the Petition (Doc. #56), and a thorough review of the now applicable law, the Plaintiff-Petitioner's Motion to Vacate, Set Aside or Correct Sentence, filed pursuant to 28 U.S.C. § 2255, is deemed by this Court to be not well taken and same is, therefore, denied in its entirety. Judgment will be ordered entered in favor of the Defendant-Respondent and against Plaintiff-Petitioner herein.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. Evolution in the law has overtaken the Plaintiff-Petitioner's Motion, in that it is now clear, certainly clearer than at the time the Motion at issue herein was filed, that the Blakely/Booker decisions, and their progeny, do not apply to cases on collateral (as opposed to direct) review.

2. While there is not yet Supreme Court authority on point, the Sixth Circuit, and all its sister circuits which have ruled on the matter (including the Ninth) have reached this conclusion. See Valentine v. United States, 488 F.3d 325 (6<sup>th</sup> Cir. 2007); Lang v. United States, 474 F.3d 348 (6<sup>th</sup> Cir. 2007); Humphress v. United States, 398 F.3d 855 (6<sup>th</sup> Cir. 2005).

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

September 24, 2007

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

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